

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TERION COLLINS,

Plaintiff,

v.

HEATHER SHIRLEY, et al.,

Defendants.

Case No.: 1:23-cv-00483 CDB (PC)

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

(Doc. 44)

Plaintiff Terion Collins is proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

I. INTRODUCTION¹

The Court issued its Discovery and Scheduling Order on January 11, 2024. (Doc. 35.)

On January 17, 2025, Defendants filed a timely motion for summary judgment. (Doc. 44.) Defendants' motion included a *Rand*² warning (Doc. 44-9), specifically addressing the requirements concerning an opposition to a motion for summary judgment.

On February 18, 2025, when more than 21 days without Plaintiff filing an opposition or statement of non-opposition to Defendants' motion, the Court issued its Order to Show Cause

¹ All parties have consented to the jurisdiction of the assigned magistrate judge for all further proceedings, including entry of judgment. (*See* Doc. 32 [minute order].)

² *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998).

(OSC) in Writing Why Sanctions Should Not be Imposed for Plaintiff's Failure to File an Opposition or Statement of Non-Opposition. (Doc. 45). Despite being directed to respond in writing within 14 days, Plaintiff did not respond to the OSC. Thus, the Court considers Defendants' summary judgment motion to be unopposed. *See* Local Rule 230(c).

II. APPLICABLE LEGAL STANDARDS

Motions for Summary Judgment

Summary judgment is appropriate when it is demonstrated that there "is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party asserting that a fact cannot be disputed must support the assertion by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials...." Fed. R. Civ. P. 56(c)(1)(A).

Summary judgment should be entered, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "[A] complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Id.* If the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually does exist. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). In attempting to establish the existence of this factual dispute, the opposing party may not rely upon the allegations or denials of their pleadings but is required to tender evidence of specific facts in the form of affidavits, and/or admissible discovery material, in support of its contention that the dispute exists or shows that the materials cited by the movant do not establish the absence of a genuine dispute. *See* Fed. R. Civ. P. 56(c); *Matsushita*, 475 U.S. at 586 n.11. The opposing party must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome of the suit under the governing law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *T.W. Elec. Serv.*,

1 *Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987). Further, the opposing
2 party must also demonstrate that the dispute is genuine, i.e., the evidence is such that a reasonable
3 jury could return a verdict for the nonmoving party. *See Wool v. Tandem Computers, Inc.*, 818
4 F.2d 1433, 1436 (9th Cir. 1987). In the endeavor to establish the existence of a factual dispute,
5 the opposing party need not establish a material issue of fact conclusively in its favor. It is
6 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the
7 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv.*, 809 F.2d at 631. Thus, the
8 “purpose of summary judgment is to ‘pierce the pleadings and to assess the proof in order to see
9 whether there is a genuine need for trial.’” *Matsushita*, 475 U.S. at 587 (quoting Fed. R. Civ. P.
10 56(e) advisory committee's note on 1963 amendments).

11 In resolving the summary judgment motion, the evidence of the opposing party is to be
12 believed. *See Anderson*, 477 U.S. at 255. All reasonable inferences that may be drawn from the
13 facts placed before the court must be drawn in favor of the opposing party. *See Matsushita*, 475
14 U.S. at 587. Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s
15 obligation to produce a factual predicate from which the inference may be drawn. *See Richards v.*
16 *Nielsen Freight Lines*, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), *aff’d*, 810 F.2d 898, 902 (9th
17 Cir. 1987). Finally, to demonstrate a genuine issue, the opposing party “must do more than simply
18 show that there is some metaphysical doubt as to the material facts.... Where the record taken as a
19 whole could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine
20 issue for trial.’” *Matsushita*, 475 U.S. at 587 (citation omitted).

21 ***Eighth Amendment Failure to Protect***

22 Prison officials have a duty “to take reasonable measures to guarantee the safety of
23 inmates, which has been interpreted to include a duty to protect prisoners.” *Labatad v.*
24 *Corrections Corp. of America*, 714 F.3d 1155, 1160 (9th Cir. 2013) (citing *Farmer v. Brennan*,
25 511 U.S. 825, 832-33 (1994) & *Hearns v. Terhune*, 413 F.3d 1036, 1040 (9th Cir. 2005)). To
26 establish a violation of this duty, a prisoner must “show that the officials acted with deliberate
27 indifference to threat of serious harm or injury to an inmate.” *Labatad*, 714 F.3d at 1160 (citing
28 *Gibson v. County of Washoe*, 290 F.3d 1175, 1187 (9th Cir. 2002)).

1 A failure to protect claim under the Eighth Amendment requires a showing that “the
2 official [knew] of and disregard[ed] an excessive risk to inmate ... safety.” *Farmer*, 511 U.S. at
3 837. “Whether a prison official had the requisite knowledge of a substantial risk is a question of
4 fact subject to demonstration in the usual ways, including inference from circumstantial
5 evidence, ... and a factfinder may conclude that a prison official knew of a substantial risk from
6 the very fact that the risk was obvious.” *Id.* at 842 (citations omitted). The duty to protect a
7 prisoner from serious harm requires that prison officials take reasonable measures to guarantee
8 the safety and well-being of the prisoner. *Id.* at 832-33; *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th
9 Cir. 1998). As “only the unnecessary and wanton infliction of pain implicates the Eighth
10 Amendment,” plaintiff must allege facts showing the defendant acted with a “sufficiently
11 culpable state of mind.” *Wilson v. Seiter*, 501 U.S. 294, 297 (1991) (internal quotations marks,
12 emphasis, and citations omitted).

13 To state a claim, the Eighth Amendment requires allegations sufficient to plausibly show
14 that prison officials were deliberately indifferent to a substantial risk of harm or safety. *Farmer*,
15 511 U.S. at 847. The objective component of an Eighth Amendment requires that a prisoner show
16 he was deprived of something “sufficiently serious.” *Foster v. Runnels*, 554 F.3d 807, 812 (9th
17 Cir. 2009) (quoting *Farmer*, 511 U.S. at 834). The state of mind requirement under the subjective
18 component of the Eighth Amendment standard has been defined as “deliberate indifference” to an
19 inmate's health or safety. *Farmer*, 511 U.S. at 834. Under the “deliberate indifference” standard, a
20 prison official cannot be found liable for denying an inmate humane conditions of confinement
21 unless the official knows of and disregards an excessive risk to inmate health or safety. *Id.* at 837.

22 III. PLAINTIFF'S CLAIMS

23 In his complaint, Plaintiff alleged as follows:

24 Plaintiff contends Defendant Degough relayed false information to
25 Wasco State Prison staff concerning the danger of carcinogenic water
26 “filled with 1, 2, 3 Trichloropropane.” Plaintiff asserts Degough
27 failed to monitor the true risk of the dangerous toxin and failed to
28 disclose the “truth of the risk of stomach ailments & risk of cancer.” Plaintiff asserts Defendant Cronjager, as head of health and safety, “has a sworn duty to always second guess, investigate and go above & beyond” to ensure the water was not toxic or chemically contaminated. Plaintiff contends Defendant Shirley “is the overseer

of the prison's well being" and failed to implement a productive plan to remedy the water problem. He contends due to "violation of their duty," his right to access clean drinking water has been violated.

Plaintiff further contends Defendant Shirley has "outlawed bottled water for sale" as an alternative to the contaminated and toxic water. Plaintiff contends he is "forced to drink toxic water" as a result. He asserts "Wasco City & prison as well as Shafter drink water from Well #1 & Well #2." Plaintiff contends Defendants Shirley and Cronjager "work & possibly live in Kern County" and have knowledge of the toxic water from "constant news stories & magazine articles & newspapers reporting" about the state of the water. Plaintiff asserts "the defendants all three knew about & continue to know about the toxic water in the Wasco State Prison." Plaintiff states the City of Shafter was directed not to "drink any of this water" and that the "Wasco prison staff knows that it has been failing a federal standard for 1, 2, 3 TCP toxin in the California systems for years now." He contends the prison "set a date from December 2017 to fix this problem" within three years; however, the water contamination problem continues to plague Plaintiff and inmates housed at Wasco State Prison "5 plus years later."

Plaintiff contends Wasco State Prison is required to provide he and other inmates with "CLEAN drinking water & not contaminated water." He asserts Degough did not "follow the protocol & contact the warden about the true emergency of the contaminated water" at Wasco. As a result, there has been "no approach to fix the water & that has physically hurt the inmate population." Plaintiff contends Cronjager "appears to have transferred the known inmates that have contracted H-pylori3 from this water & one inmate was transferred to Lancaster medical prison & succumbed to the injuries this water caused him."

Lastly, Plaintiff contends he suffers from kidney irritation, stomach pain, body rashes and eye irritation. His limbs are numb, he cannot walk at times, his skin burns, and his lungs burn and sting.

(See Doc. 8 at 3-5, fn. & internal citations omitted.)

IV. DEFENDANTS' STATEMENT OF UNDISPUTED FACTS³

Defendants submitted the following statements of undisputed facts:

³ Because Plaintiff did not file an opposition, he neither admitted nor denied the facts set forth by Defendants as undisputed nor filed a separate statement of disputed facts. Local Rule 260(b). A verified complaint in a pro se civil rights action may constitute an opposing affidavit for purposes of the summary judgment rule where the complaint is based on an inmate's personal knowledge of admissible evidence, and not merely on the inmate's belief. *McElyea v. Babbitt*, 833 F.2d 196, 197-98 (9th Cir. 1987) (per curiam); cf. *Jones v. Blanas*, 393 F.3d 918, 923 (9th Cir. 2004) (in adjudicating summary judgment motion, court must consider pro se plaintiff's contentions in motions and pleadings based on personal knowledge and attested to under penalty of perjury). Here, because Plaintiff has not complied with Rule 260(b), the Court deems Plaintiff to have admitted those facts not disputed by his complaint or other verified submissions. See, e.g., *Beard v. Banks*, 548 U.S. 521, 527 (2006); *Brito v. Barr*, No. 2:18-cv-00097-KJM-DB, 2020 WL 4003824, at *6 (E.D. Cal. July 15, 2020) (deeming defendant's undisputed facts as admitted after plaintiff failed to comply with Local Rule 260(b)).

- 1 1. Plaintiff is a California inmate in the custody of the California Department of
2 Corrections and Rehabilitation (CDCR). Plaintiff has been incarcerated at Wasco State
3 Prison since April 2022 until July 2024.
- 4 2. Defendant Shirley was the Acting Warden of Wasco State Prison in November 2020
5 and the Warden from June 2022 to January 16, 2024.
- 6 3. Defendant Cronjager became Wasco State Prison's Associate Warden in 2013 and
7 retired on December 30, 2021.
- 8 4. At all relevant times, Defendant DeGough was the Correctional Plant Manager at
9 Wasco State Prison that oversees the maintenance of physical plant operations and
10 construction projects at Wasco State Prison.
- 11 5. 1, 2, 3 – Trichloropropane (TCP) is a manmade chlorinated hydrocarbon that is
12 typically used as an industrial solvent and as a cleaning and degreasing agent.
- 13 6. In 1992, TCP was added to the list of chemicals known to the State of California to
14 cause cancer under California's Safe Drinking [and Toxic Enforcement Act. In 1999,
15 the California State Water Quality Control Board established a 0.005 µg/L drinking
16 water notification level for TCP. This level was based on cancer risks derived from
17 laboratory animal studies as reviewed by the U.S. Environmental Protection Agency
18 (EPA). It is reasonably anticipated to be a human carcinogen per the U.S. National
19 Toxicology Program. The International Agency for Research on Cancer (IARC) has
20 also classified TCP as probably carcinogenic to humans based on sufficient evidence
21 of carcinogenicity in experimental animals. There have not been any human studies
22 evaluating the risk of TCP and cancer.]⁴
- 23 7. There is no federal [maximum containment level or] MCL for TCP in drinking water,
24 but the U.S. Environmental Protection Agency requires many large water utilities to
25 monitor for TCP with a minimum reporting level of 0.03 ug/L. Some states have

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27 ⁴ The language appearing within brackets was added as it appeared incomplete; the language was taken directly from
28 the Declaration of Timur S. Durrani, M.D., M.P.H., at paragraph 16 on pages 4 and 5, as identified by Defendants in
 support of the undisputed fact asserted.

established their own MCLs. For example, Hawaii established a state MCL of 0.6 ug/L.

8. In December 2017, a California regulation established a much more stringent MCL of 0.005 ug/L. The regulation went into effect on January 1, 2018. The regulation also required all water systems in California to conduct quarterly monitoring for TCP in water sources.
9. Wasco State Prison's water was tested quarterly by an independent laboratory, Environmental Agricultural Analytical Chemists, as required by the regulation.
10. Since April 2022 (when Plaintiff arrived at Wasco State Prison), eight quarterly tests have been conducted, the latest in August 2024. [¶] The TCP levels were as follows:

	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
2022	.013- .023 ug/L	.014- .024 ug/L	.015- .023 ug/L	.010- .017 ug/L
2023	.008- .008 ug/L	.008- .011 ug/L	.007- .012 ug/L	.000 – .006 ug/L
2024	.000- 0.00 ug/L	.009- .021 ug/L	.000 – .009 ug/L	N/A

11. Notices reporting the independent laboratory's findings were posted throughout the institution for each quarter that the TCP levels in Wasco State Prison's water exceeded

1 the MCL.

2 12. The quarterly notices stated that Wasco State Prison's TCP levels do not present an
3 emergency and that inmates do not need to use an alternative source of water, like
4 bottled water.

5 13. The notices did not state that Wasco State Prison's specific TCP levels were high
6 enough to cause illness. The notices indicated that "some people who drink water
7 containing 1, 2, 3-trichloropropane in excess of the MCL over many years may have
8 an increased risk of getting cancer," and encouraged those concerned about other
9 health issues to consult a doctor.

10 14. Defendant DeGough was listed as the point of contact for more information.

11 15. Expert evidence shows that Wasco State Prison's TCP levels were and are not
12 dangerous.

13 16. Defense expert, medical toxicologist Timur Durrani, M.D., M.P.H, reviewed relevant
14 literature, Wasco State Prison's water records, Plaintiff's complaint, Plaintiff's
15 deposition transcript, and Plaintiff's medical records from October 2015 through July
16 2024.

17 17. There are no reports of acute or chronic medical conditions in scientific literature for
18 an 18-month exposure to the concentration of TCP reported in the water at Wasco
19 State Prison. Thus, Dr. Durrani opined that although Wasco State Prison's water
20 contained TCP concentrations above the MCL, acute and chronic medical conditions
21 are not expected to occur from exposure to TCP in Wasco State Prison's water from
22 January 2023 to July 2024.

23 18. Accordingly, Wasco State Prison's water has been safe to drink at all relevant times,
24 even when it was out of compliance with the new MCL.

25 19. Moreover, Wasco State Prison was never ordered to stop providing its water to
26 inmates or to provide an alternative source of water.

27 20. Plaintiff's alleged effects of kidney irritation, stomach pain, body rashes, or eye
28 irritation are not consistent with published scientific literature on TCP exposure.

21. Collins's health history before his exposure to TCP at Wasco State Prison included a right knee and ankle sprain.
22. After his alleged exposure, he was noted to have contracted COVID in August of 2022 and food poisoning in February of 2023. He was also reported to have gingivitis and tooth decay in August of 2024.
23. There is no medical record of Mr. Collins's alleged effects of kidney irritation, stomach pain, body rashes, or eye irritation at the time of or following the alleged exposure.
24. The evidence does not support Mr. Collins's claimed kidney damage, body rashes, eye irritation, liver pain, and unspecified chronic pain as being caused by exposure to TCP in Wasco State Prison.
25. Dr. Durrani calculated Plaintiff's maximum daily ingestion of TCP as 0.0000003628190217 mg/kg/day, based on Plaintiff's self-reported ingestion of 1.4 liters of water per day and body weight of 93.9 kg.
26. TCP's reference dose, meaning the estimated dose of daily oral exposure for a chronic duration that is likely to have no appreciable risk of deleterious effects, is 0.004 mg/kg/day.
27. Because Plaintiff's daily, chronic exposure dose of 0.0000003628190217 mg/kg/day is significantly lower⁵ than the 0.004 mg/kg/day reference dose, Plaintiff's exposure to TCP between April 2022 and July 2024, would not be expected to have even a minimal risk of harmful effects during his lifetime.
28. As part of California's TCP MCL regulation, California designated Granular Activated Carbon (GAC) treatment as the best available technology for TCP removal.
29. Activated carbon treatment requires installation of several large vessels containing thousands of pounds of activated carbon.
30. As water passes through the vessels, the TCP attaches to the carbon granules and

⁵ Plaintiff's daily, chronic exposure dose is nearly 4,000 times below the EPA's Reference Dose.

1 filters out of the water.

2 31. Defendant DeGough worked with the State Water Resources Board to come up with a
3 Corrective Action Plan, which included a Capital Outlay Budget Change Proposal to
4 install a GAC filtration system.

5 32. Wasco State Prison's Warden at the time, John Sutton, signed off on the plan, which
6 was submitted to the State Water Resources Board and submitted the GAC
7 construction project to the Facility Asset Management Branch on August 31, 2018.

8 33. According to the Capital Outlay Budget Change Proposal, the estimated cost of
9 installing the GAC system was \$1,017,100.00.

10 34. Defendant DeGough did not participate further in planning or implementing the
11 Corrective Action Plan. Once the Corrective Action Plan was submitted, Defendant
12 DeGough had no authority to do anything regarding Wasco State Prison's water
13 supply except issue quarterly notices when the TCP levels in the water system
14 exceeded the MCL.

15 35. Between August 2018 and April 2021, the Facilities Management Group reviewed and
16 researched the proposed Corrective Action Plan.

17 36. On April 20, 2021, the Facilities Management Group received final drawings and
18 specifications approval and initiated the bid process for the proposed GAC system.

19 37. In September 2021, the Facilities Management Group submitted contract documents to
20 CDCR's Office of Business Services (OBS).

21 38. By May 5, 2022, CDCR accepted W.M. Lyles Construction's bid to install the GAC
22 system.

23 39. Construction began on November 1, 2022.

24 40. By July 24, 2023, foundation excavation, underground utilities, and piping installation
25 had begun.

26 41. By January 29, 2024, the cement foundation was completed, and the GAC vessels
27 were set with partial piping and valving. However, inclement weather delayed
28 completion of construction,

1 42. The influent and effluent piping was installed by April 24, 2024.

2 43. By August 7, 2024, the installation of Variable Frequency Drives was 80% complete
3 with Variable Frequency Drives installation in progress.

4 44. As of August 4, 2024, the Variable Frequency Drives are operational, and the
5 chlorination and bacterial testing of the GAC vessels and related piping has been
6 completed. The GAC installation project was 80% complete with vessel loading and
7 activation of the GAC system scheduled to follow.

8 45. Defendant Shirley had very little involvement or responsibility in responding to
9 Wasco State Prison's TCP levels.

10 46. Defendant Shirley had no authority to authorize a project the size of the TCP removal
11 plant.

12 47. When Defendant Shirley became the Acting Warden in November 2020, CDCR and
13 Wasco State Prison had already determined that the best approach to bringing the
14 water into compliance with the MCL would be to install the GAC system.

15 48. Defendant Shirley deferred to the expertise of Wasco State Prison's plant operations
16 staff and CDCR staff on matters regarding TCP compliance. The staff working on the
17 GAC project regularly reported the progress of the project to Defendant Shirley.

18 49. While she was acting Warden and Warden, Defendant Shirley and her staff
19 transmitted quarterly water tests to the State Water Resources Board, posted quarterly
20 notices required by regulation regarding the TCP levels, and provided annual
21 consumer confidence reports regarding the quality of Wasco State Prison's water.

22 50. While Defendant DeGough was listed as the point of contact on the quarterly water
23 notices to Wasco State Prison inmates, the notices are templates provided by the State
24 Water Resources Board and the TCP levels are based on an independent laboratory's
25 findings.

26 51. Moreover, Defendant DeGough did not relay false information about Wasco State
27 Prison's TCP water levels and related risks.

28 52. Defendant Cronjager's responsibilities as Associate Warden included, but were not

- 1 limited to, supervising the overall operations of Wasco State Prison's physical plant.
- 2 53. However, Defendant Cronjager is not a water expert, and it was not part of his job
- 3 duties or responsibilities to investigate or second guess independent laboratory
- 4 findings or the State Water Resources Board's information concerning Wasco State
- 5 Prison's TCP levels. Further, he was not personally involved in the day-to-day
- 6 activities of plant operations staff he supervised. Rather, Defendant Cronjager relied
- 7 on their expertise to work with CDCR's Facility Planning, Construction and
- 8 Management division to come up with a plan to treat the water to bring it into
- 9 compliance with state regulation.
- 10 54. Defendants were not aware that Wasco State Prison's water presented any risk to any
- 11 inmate or staff.
- 12 55. Specifically, Defendants were informed by the State Water Resources Board that the
- 13 TCP levels in Wasco State Prison's water did not present a health concern.
- 14 56. Defendants Shirley and DeGough were never informed that Wasco State Prison's
- 15 water presented an immediate danger to Plaintiff or to any other inmate or staff while
- 16 it was out of compliance with the new MCL.
- 17 57. Defendant Cronjager retired from CDCR over a year before Plaintiff arrived at Wasco
- 18 State Prison. Defendant Cronjager had no duty to ensure that Wasco State Prison's
- 19 water did not present an immediate danger to Plaintiff during his incarceration at
- 20 Wasco State Prison.
- 21 58. Additionally, Defendants were never informed that an alternative water source was
- 22 necessary while the GAC filtration system was being designed and built.
- 23 59. There is no evidence that Plaintiff ingested or was exposed to toxic or harmful doses
- 24 of TCP from any source.
- 25 60. It is Dr. Durrani's expert opinion that Plaintiff did not become ill from ingesting or
- 26 being exposed to the TCP concentrations in Wasco State Prison's water, that his future
- 27 health will not be affected, and that he does not have any risk of developing the
- 28 diseases associated with TCP.

61. No doctor has ever diagnosed any of Plaintiff's claimed conditions as being caused by TCP.

62. Collins has not seen a doctor for his kidneys.

(See Doc. 44-8 & Doc. 46-1 [Amended].)⁶

V. DISCUSSION

Defendants contend they were not deliberately indifferent to the non-dangerous levels of TCP in Wasco State Prison's water. (Doc. 44-1 at 13.) Specifically, they maintain the water did not present a substantial risk of serious harm (*id.* at 14-16) and that they reasonably responded to any risk posed by TCP (*id.* at 16-18). Lastly, Defendants argue they are entitled to qualified immunity. (*Id.* at 18-21.) Plaintiff has not offered any opposition to Defendants' arguments.

Briefly stated, Defendants' evidence establishes that although the water at Wasco State Prison exceeded the MCL for TCP in California, during the relevant period, the prison's water was safe to drink. Further, Plaintiff's physical complaints are inconsistent with exposure to TCP. And Plaintiff's maximum exposure during the relevant period was miniscule compared to the dosage or amount considered likely to have even a minimal risk of harm. Concerning Defendant DeGough, Defendants' evidence establishes that DeGough worked with various authorities to address the TCP in the water at Wasco State Prison, and after the corrective action plan⁷ was approved in August 2018, DeGough issued quarterly notices when the TCP levels exceeded the MCL, but he had no authority to take any further action. Concerning Defendant Shirley, the evidence establishes that during Shirley's tenure, the corrective action plan was already in place and approved. Shirley deferred to plant operations and other staff with expertise in TCP compliance and transmitted and posted required notices and provided annual reports regarding water quality of Wasco State Prison. As concerns Defendant Cronjager, the evidence reveals that he was not personally involved in the TCP water remediation plan and relied on the CDCR's

⁶ Hereafter "UDF" followed by the relevant number.

⁷ The plan involved installation of a Granular Activated Carbon filtration system. Construction began on November 1, 2022, and was 80 percent complete as of August 7, 2024. (See Doc. 44-6, ¶¶ 9-11, 15-19 [Declaration of S. DeGough].)

1 experience and the approved plan to treat the water and to bring it in compliance with the state
2 regulation. Additionally, Defendant Cronjager retired before Plaintiff arrived at Wasco State
3 Prison. Further, the Defendants were not aware of any risk posed to inmates or staff by the water
4 at Wasco State Prison, nor were they informed that an alternative source of water was necessary
5 at the facility. Defendants were informed by the State Water Resources Board that TCP levels in
6 Wasco State Prison's water did not present a danger.

7 The Court has reviewed all the evidence presented, including the supporting declarations
8 of T. Durrani, H. Shirley, J. Cronjager, and Mohammad Iranmanesh. The Court concludes that
9 Defendants' have presented evidence that Wasco State Prison's water did not present an
10 objectively serious risk of harm. *See* UDF Nos. 10, 12-13, 15, 17, 19, 25-27. Further, Defendants
11 have presented evidence indicating that Plaintiff did not consult a physician concerning any
12 kidney issues nor has any physician ever diagnosed the symptoms he allegedly suffered as being
13 caused by consuming the water at Wasco State Prison. *See* UDF Nos. 58-61. Next, Defendants
14 have presented evidence that they responded reasonably to any risk that TCP presented at Wasco
15 State Prison. *See* UDF Nos. 10-13, 19, 28, 31-43, 45, 47, 50-51, 52-53, 55-57. In short,
16 Defendants have met their initial burden by demonstrating there is no genuine dispute as to any
17 material fact. Fed. R. Civ. P. 56(a). Thus, the burden shifts to Plaintiff as the non-moving party to
18 establish that a genuine issue as to any material fact actually does exist. *Matsushita*, 475 U.S. at
19 586. Plaintiff has failed to do so; he has tendered no evidence to support his claims in this action.
20 Fed. R. Civ. P. 56(c); *Matsushita*, 475 U.S. at 586 n.11.

21 The assertions made in Plaintiff's complaint do not establish the existence of any factual
22 dispute. *See* Fed. R. Civ. P. 56(c); *Beard*, 548 U.S. at 527; *McElyea*, 833 F.2d at 197-98. And
23 Plaintiff has completely failed to offer proof concerning the essential elements of his Eighth
24 Amendment failure to protect claims against Defendants. *Celotex*, 477 U.S. at 322; *see Farmer*,
25 511 U.S. at 832-33, 847; *Labatad*, 714 F.3d at 1160; *Foster*, 554 F.3d at 812; *Frost*, 152 F.3d at
26 1128. Plaintiff has not demonstrated, nor does it appear he could demonstrate, that Defendants
27 knew of and disregarded an excessive risk to his health and safety. *Farmer*, 511 U.S. at 834.

28 In sum, on this record, no rational trier of fact would find for Plaintiff as there is no

1 genuine issue for trial in this matter. *Matsushita*, 475 U.S. at 587. Defendants are entitled to
2 summary judgment.⁸

3 **VI. CONCLUSION AND ORDER**

4 Based on the foregoing, this Court **HEREBY ORDERS** that:

- 5 1. Defendants' motion for summary judgment (Doc. 44) is **GRANTED**; and
6 2. The Clerk of the Court be directed to enter judgment in favor of Defendants Shirley,
7 DeGough, and Cronjager, and to close this case.

8 IT IS SO ORDERED.

9 Dated: **June 5, 2025**


UNITED STATES MAGISTRATE JUDGE

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⁸ Because the Court has found that Defendants are entitled to judgment on the merits, the Court does not reach Defendants' alternative argument that they are entitled to qualified immunity.